covering the property by mistake granted to the defendant. *Held*, that the defendant holds the land in trust for the plaintiff and must convey to him. *Lamb* v. *Schiefner*, 40 N. Y. L. J. 1495 (N. Y., App. Div., Jan. 8, 1909).

It is obviously inequitable that a grantee retain property not intended to be conveyed to him. As between the original parties equity will in such case either allow complete mutual restitution or convert the grantee into a constructive trustee of the property inadvertently passed, and order a reconveyance. *Brown* v. *Lamphear*, 35 Vt. 252. It has been declared in general terms that redress will also be given as between those claiming under the original parties in privity. 1 STORY, EQ. JUR., 13 ed., § 165. Privity in this connection has been variously interpreted. See *White* v. *Kingsbury*, 77 Tex. 610; *Farley* v. *Bryant*, 32 Me. 474. It is submitted that on principle and authority no narrower rule should govern than that applicable to the running of equities generally. *May* v. *Adams*, 58 Vt. 74. Thus conceived, privity may be based either upon assignment of the contract or upon succession to the property. By construing the common grantor's deed to the plaintiff as a transference of his beneficial interest, the court readily finds privity of estate. A desirable result is accordingly achieved by correct technical processes. See *Widdicombe* v. *Childers*, 124 U. S. 400.

CORPORATIONS — FEDERAL JURISDICTION — FORMATION OF NEW CORPORATION TO EFFECT DIVERSITY OF CITIZENSHIP. — A South Dakota corporation brought ejectment against a citizen of Georgia in the United States Circuit Court, claiming jurisdiction by diversity of citizenship. The plea showed that the plaintiff was not the real party in interest, but had been organized and was doing business that citizens of Georgia might use its corporate name in order to create an apparent diversity of citizenship, and so get into the federal courts. *Held*, that the action be dismissed, as an attempted fraud on the court's jurisdiction. *Southern Realty Investment Co.* v. *Walker*, U. S. Sup. Ct., Jan. 4, 1909.

This decision is the logical outcome of a number of similar cases, where the property in controversy was conveyed to a new corporation organized for the purpose of acquiring federal jurisdiction. The Supreme Court has uniformly dismissed these suits. *Lehigh Mining & Mfg. Co.* v. *Kelly*, 160 U. S. 327; *Miller & Lux* v. *East Side Canal, etc., Co.*, 211 U. S. 293. The fraud is still more palpable where the cause of action is assigned, or where the name of the corporation organized for the fraudulent purpose is "borrowed." An assignment to an existing foreign corporation doing a legitimate business would probably be treated in the same way, since the transaction would be as much for the sole benefit of the real owner as in the case of a transfer of the property. However, a *bona fide* purchaser of the claim, or of the property, should, of course, be allowed to sue. For a discussion of the principles involved, and a consideration of the *Miller & Lux* case, see 22 HARV. L. REV. 290.

EQUITABLE CONVERSION — DEVOLUTION AFTER TOTAL FAILURE OF PURPOSES OF CONVERSION. — By a marriage settlement, real estate was conveyed by the settlor to trustees to the use of the settlor for life, and then to the use of trustees upon trust to sell for certain specified purposes. Afterwards, by his will, the settlor devised all his interest in these estates to his successor in fee. At the time of the settlor's death all the purposes for which conversion had been directed had failed. *Held*, that these estates devolve as realty under the testator's will. *In re Lord Grimthorpe*, [1908] 2 Ch. 675.

When real estate is settled upon trust to sell for certain purposes, the general rule is that the conversion takes effect as soon as the deed is executed. *Griffith* v. *Ricketts*, 7 Hare 299. Under this rule, the estates would be treated as personalty from the time of the marriage settlement. Nevertheless, since the settlor possessed the entire beneficial interest at the time of his death, he was entitled to elect, as he did by his will, that the property should remain in the form of realty. See *Harcourt* v. *Seymour*, 2 Sim. N. S. 12; *Stead* v. *Newdigate*, 2 Meriv. 521. The court, however, obtained the same result by the less artificial

theory that since no one was ever entitled to enforce the sale, there was never any conversion into personalty. See *Davenport* v. *Coltman*, 12 Sim. 610. The case would seem somewhat clearer if it were held that a conversion does not take place until the contingency upon which the sale is to be made has occurred. See *Paisley* v. *Holzshu*, 83 Md. 325. But see *Clarke* v. *Franklin*, 4 Kay & J. 257. Such a view would make applicable the rule, that there can be no conversion where all the purposes for which the conversion was directed have failed before the time when the conversion would otherwise occur. *Read* v. *Williams*, 125 N. Y. 560; *Smith* v. *Claxton*, 4 Madd. 484.

EQUITABLE CONVERSION — WHETHER SURPLUS PROCEEDS OF SALE OF LAND BY COURT DESCENDS AS REALTY OR PERSONALTY. — On A's death B became entitled to certain land. This land was subsequently sold by order of the court for the payment of the costs of settling the estate. After the sale B died intestate. *Held*, that the surplus resulting from the sale descends as personalty. *Burgess* v. *Booth*, [1908] 2 Ch. 648.

This decision reverses that of the lower court, criticized in 21 HARV. L. REV. 630.

ESTOPPEL — ESTOPPEL IN PAIS — FUTURE CONDUCT AS BASIS OF ESTOPPEL. — A sold land to B, taking a mortgage in part payment. B agreed to improve the land and to resell to A, who stipulated in the agreement that his mortgage should be subordinated to any mortgage which B might place on the premises to secure the payment of contemplated building loans. C, to whom B showed the agreement, made loans to B, and took a mortgage on the premises. Subsequently B released A from his subordination agreement. *Held*, that A, in seeking to foreclose his mortgage, is estopped to set up its priority. *Loudner* v. *Perlman*, 40 N. Y. L. J. 1439 (Dec., 1908).

In England a representation as to future conduct cannot form the basis of an estoppel. See *Jorden* v. *Money*, 5 H. L. C. 185, 214. In this country the tendency of the courts, expressed mainly in dicta, is to make an exception in cases where the representation relates to the intended abandonment of an existing right, if the representation is made to influence others and is in fact acted upon. *Insurance Co.* v. *Mowry*, 96 U. S. 544. In such cases equity should not aid the promisor in evading his undertaking. *Faxon* v. *Faxon*, 28 Mich. 159. But the decision here may be supported on another ground. In New York an agreement made for the benefit of creditors of the promisee gives them a vested right against the promisor when they show their consent by word or act. *Gifford* v. *Corrigan*, 117 N. Y. 257. In the case considered the legal remedy of C, the creditor, is distinctly inadequate, and equity, therefore, should grant him specific performance. *Hermann* v. *Hodges*, L. R. 16 Eq. 18. Then C's right to specific performance of A's agreement to subordinate his mortgage gives C an equitable defense in a foreclosure by A. *Randall* v. *White*, 84 Ind. 509.

EXECUTORS AND ADMINISTRATORS — ADMINISTRATION BONDS — SURETY'S LIABILITY. — B, the executrix of X, found among the assets of the estate shares of stock which in good faith she inventoried. She sold them and applied the money to the purposes of the estate. It subsequently appeared that the stock had been paid for by X with forged bonds. A, a judgment creditor of X, sued B and her surety on their bond. *Held*, that since the executrix appropriated the money as part of the estate, the surety is liable on his bond. *Wiseman* v. *Swain*, 114 S. W. 145 (Tex., Ct. App.).

The surety on an executor's bond obligates himself only for the principal's faithful administration of the assets. *Campbell* v. *Sacray*, 19 Ky. L. Rep. 1912. Assets are such things as the executor may properly appropriate to paying debts and legacies. *Given's Case*, 34 N. J. Eq. 191. By the weight of authority trust funds coming into the hands of an executor are not assets of the estate, even though treated as such by the executor. *People* v. *Petrie*, 191 Ill. 497.